Appellant's Reply Brief

Office - Supreme Court, U.S.
FILED
AUG 11 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-5

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,

Appellant,

VS.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

JESSE R. PIERCE
PORTER & CLEMENTS
711 Polk, Suite 1200
Houston, Texas 77002
(713) 757-7040

Counsel for Appellant

TABLE OF CONTENTS

PAGE

ARGUMENT

I. The Issue is Justiciable 1

II. The Federal Questions are Substantial 3

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

Holt Civic Club v. *City of Tuscaloosa*, 439 U.S. 60 (1978) .. 1, 2

Hunter v. *City of Pittsburgh*, 207 U.S. 161 (1907) 1, 2, 3

Gomillion v. *Lightfoot*, 364 U.S. 339 (1960) 1

Superior Oil Co. v. *City of Port Arthur*, 535 F.Supp. 916 (E.D. Tex. 1982) 4

United States v. *Carver*, 260 U.S. 482 (1923) 2

Wilcox v. *St. Mary's University*, 531 S.W.2d 589 (Tex. 1975). 3

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,

Appellant,

VS.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

ARGUMENT

I.

The Issue is Justiciable

This appeal squarely raises the issue of whether *Hunter* v. *Pittsburgh*, 207 U.S. 161 (1907), stands as an absolute bar to constitutional challenges to municipal annexations under the Fourteenth Amendment. *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), teaches that the ruling in *Hunter* v. *City of Pittsburgh* is not absolute. This Court recognized as much recently in *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60 (1978). While *Hunter* v. *City of Pittsburgh* unquestionably has continuing constitutional significance, this Court also expressly noted that it did

"not mean to imply that every [state provision respecting extraterritorial powers of cities] would pass constitutional muster." *Holt Civic Club* v. *City of Tuscaloosa, supra,* n. 8, at 72. Presumably this Court also did not intend to imply that every conceivable municipal annexation would also pass constitution muster.

Appellants erroneously seek to breath new life into *Hunter* v. *City of Pittsburgh* by noting the denial of certiorari by this Court in several cases which applied *Hunter* v. *City of Pittsburgh* to municipal annexations. Of course, "the denial of certiorari imports no expression of opinion on the merits of the case, as the bar has been told many times." *United States* v. *Carver,* 260 U.S. 482, 490 (1923).

Appellees' Motion to Dismiss or Affirm should not be permitted to cloud the issues presented by the mention of several tangential and irrelevant matters. For example, the quo warranto proceeding mentioned in footnote 2 (Motion to Dismiss or Affirm at 2) is in no way involved in the instant appeal. Appellees cannot rely on the quo warranto action to support the judgment under attack here because the judgment in the quo warranto action was not made a basis of the majority opinion of the court of appeals in deciding this case below. Also, contrary to appellees' assertion (Motion to Dismiss or Affirm at 3), appellant did not challenge the annexation and taxation of this property under the equal protection clause of the Fourteenth Amendment. In an alternative claim in the state courts, appellant contended that appellees' system of granting industrial district contracts violated the equal protection clause. However, the annexation ordinance and the resulting taxation were challenged only on due process grounds, as set out in the Jurisdictional Statement at 2-5. No equal protection argument is presented here because the annexation ordinance and the taxation of the property were not challenged on that basis in the state courts.

II.

The Federal Questions are Substantial

The ultimate issue involved in this appeal is whether a city is permitted under the Due Process Clause of the Fourteenth Amendment to annex and tax property to which it can provide *no* benefit. Throughout their Motion to Dismiss or Affirm, appellees state that the issue is whether the property must receive *direct* benefit. Appellant realizes that there is no constitutional requirement of direct benefit, and it has not and does not contend otherwise. Appellant has alleged throughout this case that no benefit of any type, direct or indirect, tangible or intangible, can be extended to a submerged gas field and production equipment located nine miles out in the Gulf of Mexico. This allegation was made in the court of appeals and the court of appeals obviously understood it, for that court wrote that "the mere fact . . . that no municipal services were provided does not render the annexation ordinance void." 628 S.W.2d at 97.[1] Appellees should not be permitted to distract this Court's attention from the issue raised and decided below by their mischaracterization of the grounds of appellant's constitutional challenge.

Appellees' sole ground for challenging the substantiality of the questions presented is *Hunter* v. *City of Pittsburgh*. The federal questions presented involve issues that are of grave importance to the oil industry, municipal governments, and states that grant offshore mineral leases. The justiciability question also raises an

---

[1] Appellees' statements at n. 5, p. 6 of the Motion to Dismiss or Affirm regarding the summary judgment proof are merely quibbling and are of no legal significance. Under Texas law, a court reviewing a summary judgment is required to construe evidence favorable to the non-movant as true, to indulge any reasonable inference in favor of the non-movant, and to resolve all doubt in favor of the non-movant. *Wilcox* v. *St. Mary's University*, 531 S.W.2d 589 (Tex. 1975). Thus, the court of appeals was required to assume, as it apparently did, that *no* benefit could be extended to appellant's property. This being so, the tax dollars in question *ipso facto* were solely for the benefit of other property.

important issue as to the scope of the due process clause and the power of courts to redress violations of the rights guaranteed by the clause.

Appellees' contention that appellant's due process argument is without merit and "borders on being frivolous" (Motion to Dismiss or Affirm at 6) flies in the face of a holding by a United States District Court, after a trial, that this very annexation "was merely a land grab" and was violative of the due process clause. *Superior Oil Co.* v. *City of Port Arthur*, 535 F.Supp. 916, 918, (1982).[2]

Substantial and important questions are presented here and Appellant respectfully submits that this Court should decide them.

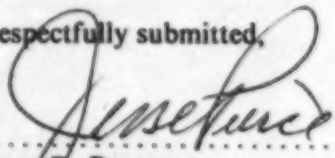
---

[2] This case has been stayed pending the outcome of the instant appeal. 535 F.Supp. 916, 921 (1982).

CONCLUSION

For the reasons stated, appellant requests that appellees' Motion to Dismiss or Affirm be denied and that this Court note probable jurisdiction and either summarily reverse the judgment below or set the case for oral argument.

Respectfully submitted,



JESSE R. PIERCE
PORTER & CLEMENTS
711 Polk, Suite 1200
Houston, Texas 77002
(713) 757-7040
Counsel for Appellant

Of Counsel:

THOMAS H. LEE
FOREMAN & DYESS
4200 InterFirst Plaza
Houston, Texas 77002
(713) 658-8500

PATRICK F. TIMMONS
P. O. Box 1521
Houston, Texas 77001
(713) 751-4487

CERTIFICATE OF SERVICE

I, Jesse R. Pierce, a member of the Bar of this Court, and attorney for Appellant, The Superior Oil Company, do hereby certify that on this 10th day of August, 1982, in compliance with Rule 28 .3. & .5.(b) of the Rules of this Court, three copies of the foregoing Brief Opposing Motion to Dismiss or Affirm were mailed to the following persons, who are or represent all parties required to be served:

Mr. Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
San Jacinto Building
Beaumont, Texas 77701

Mr. George Wikoff
City Attorney
City of Port Arthur
P. O. Box 1089
Port Arthur, Texas 77640

Jesse R. Pierce